

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LUKE LEFEVER,

Plaintiff,

vs.

IVAN CASTELLANOS, Dawson County
Deputy, in his individual capacity;
JEROME KRAMER, Lincoln County
Sheriff, in his official and individual
capacities; ROLAND KRAMER, Chief
Deputy, in his individual capacity;
BRETT SCHMIDT, Deputy, in his
individual capacity; and CARLOS
TREVINO, Nebraska State Patrol
Trooper, in his individual capacity,

Defendants.

4:20CV3066

**MEMORANDUM
AND ORDER**

On July 9, the court directed the Clerk of Court to enter a default against Defendant Carlos Trevino in his individual capacity for failure to plead or otherwise defend within 21 days after being served with the summons and complaint, as required by Fed. R. Civ. P. 12(a). On July 15, 2021, Defendant Trevino filed a Motion to Set Aside Default Judgment (Filing 36), which the court construes as a motion to set aside the entry of default under Federal Rule of Civil Procedure 55(c). Plaintiff has filed an objection to this motion. (Filing 38.)

A court may set aside the entry of default under Fed. R. Civ. P. 55 (c) for “good cause.” To determine whether good cause exists, this court considers the: (1) blameworthiness or culpability of the defaulting party; (2) existence of a meritorious defense; and (3) prejudice to the other party by setting aside default. *Johnson v. Leonard*, 929 F.3d 569, 573 (8th Cir. 2019). Setting aside default is often appropriate

“for marginal failures when there [are] meritorious defenses and an absence of prejudice.” *Id.*, at 573-74 (quoting *Johnson v. Dayton Elec. Mfg. Co.*, 140 F.3d 781, 784 (8th Cir. 1998)).

Defendant Trevino explains that the default occurred because after being served with process, he emailed a copy of the Complaint to the Nebraska Attorney General’s Office, which was defending him in a parallel state court action filed by Plaintiff, and the emailed Complaint was mistakenly filed by the Attorney General with documents pertaining to that case. Defendant represents he has a meritorious defense and states he has filed a motion to dismiss the state court claims on the merits. Defendant promptly filed the pending motion to set aside default, and the court finds Plaintiff will not be prejudiced by a slight delay. Although this case was filed in June 2020, it has not gotten past the pleading stage and no progression order has been entered.

IT IS THEREFORE ORDERED:

1. Defendant Trevino’s motion to set aside default (Filing 36) is granted.
2. Plaintiff’s objection (Filing 38) is denied.
3. The default entered by the Clerk of Court on July 9, 2021 (Filing 35), is hereby set aside.

Dated this 30th day of July 2021.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge